

REMARKS

This is a Response to the Office Action mailed July 7, 2005, in which a three (3) month Shortened Statutory Period for Response has been set, due to expire October 7, 2005. Fifteen (15) claims, including five (5) independent claims, were paid for in the application. Claims 4 and 6-11 have been amended. No new claims or new matter have been added to the application. No fee for additional claims is due by way of this Amendment. Claims 1-15 are currently pending. The Director is authorized to charge any additional fees due by way of this Amendment, or credit any overpayment, to our Deposit Account No. 19-1090.

Objection to the Abstract

The Abstract has been amended to have less than 150 words. A redlined version of the Abstract is provided herein.

Objection to Claims 4 and 6-11

Claim 4 has been amended to remove the term “(pitch)” as requested by the Examiner.

Claims 6-11 have been amended to recite method steps and thus be in proper form for method claims. Accordingly, Applicant requests that the Examiner treat claims 6-11 as method claims.

Allowable Subject Matter

Applicant thanks Examiner Nguyen for indicating that claim 5 would be allowable if rewritten in independent form, which would include all of the limitations of the base claims and any intervening claims. At this time, Applicant does not choose to rewrite claim 5 in independent form.

35 U.S.C. § 102(b) Rejection Based on Antoniou et al.

The Examiner has rejected claims 1, 2, and 13-15 under Section 102(b) as being anticipated by a publication authored by Antoniou et al. (Antoniou) entitled “On the Theory of

SODAR Measurement Techniques” and having a date of authorship of April 2003. Applicant traverses this rejection on the ground that Antoniou is not a prior art reference.

The publication date of Antoniou can be no earlier than April 2003, which is indicated as the date of authorship. Arguably, the date of publication is May 2003 as indicated by the date in the lower left portion of the publication shown as “Webmaster 12 maj 2003.” In contrast, Applicant’s U.S. patent application has an effective filing date of June 26, 2002, which is the international filing date of the Patent Cooperation Treaty (PCT) application, PCT/EP02/07043. *See* MPEP § 1895.01. Accordingly, Antoniou is not prior art with respect to Applicant’s patent application.

35 U.S.C. § 102(e) Rejection Based on Heronemus

The Examiner has rejected claims 4, 6, and 8-10 under Section 102(e) as being anticipated by U.S. Patent No. 6,749,399 to Heronemus, which was filed on March 7, 2002, published on September 11, 2003, and issued on June 15, 2004. The effective date of Heronemus as a Section 102(e) reference is the filing date of March 7, 2002.

Applicant traverses the Section 102(e) rejection because Applicant reduced the invention to practice before the filing date of Heronemus. Therefore, Heronemus is not a prior art reference. Applicant swears behind the Heronemus reference with the attached Declaration of Klaus G. Göken. The attached Declaration complies with requirements of 37 C.F.R. 1.131.

The Declaration establishes that Applicant constructively reduced the invention to practice by filing German Patent Application No. 101 37 272.8 on July 31, 2001. Göken Decl. ¶ 6. The claims in the U.S. Patent Application are fully supported by the subject matter in the German Patent Application. Göken Decl. ¶ 9. The filing date of the German Patent Application, which is July 31, 2001, is well before the filing date of the Heronemus reference, which was March 7, 2002. Göken Decl. ¶ 10. Consequently, Applicant respectfully requests that the Section 102(e) rejection be withdrawn because Applicant’s constructive reduction to practice of the invention predates the filing date of Heronemus.

35 U.S.C. § 103 Rejection Based on Heronemus in view of Antoniou

The Examiner has rejected claims 1-3 and 9 under Section 103(a) as being anticipated by Heronemus in view of Antoniou. Based on the foregoing reasons, Applicant respectfully requests that these Section 103 rejections be withdrawn because both Heronemus and Antoniou are not prior art references.

35 U.S.C. § 103(a) Rejections

The Examiner has rejected claims 6, 11, and 12 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Published Patent Application No. 2002/0067274 (Serial No. 09/729,249) issued to Haller. The Examiner asserts that it would have been obvious to a person having ordinary skill in the art to build the wind park of Haller with a sensor capable of detecting wind conditions as an expedience to feather the pitch of the rotor blades of the wind park to prevent damage caused by strong wind conditions.

Haller discloses and teaches an apparatus and method for detecting and tracking hailstorms to generate warning signals to installed wind turbines (Abstract). Haller teaches that upon the detection of the hailstorm and generation of the warning signals, the blade positioning and rotation of the wind turbines in the wind park can be controlled to minimize the blade surface area presented to possible hail impacts (Abstract). Haller discloses a sensor 28 that is capable of remotely detecting and tracking hailstorms. Haller teaches that this type of sensor 28 is preferably a “C” band radar, but may be a radar operating in other bands, or an optical device such as a LIDAR (laser light emitting device) (¶ 0030; column 4).

Haller specifically teaches that the primary purpose of the invention is to protect the rotor blades of the wind turbines when the horizontal wind speeds are below maximum threshold values, yet the possibility of damage causing hail remains present (¶ 0027; column 4). Alternatively stated, Haller specifically teaches that the invention “satisfies the need to provide a way for wind turbines to be protected during hail storms *irrespective of horizontal wind speeds*”(emphasis added; ¶ 0027; column 4).

The Examiner acknowledges that Haller does not disclose the sensor 28 for detecting wind conditions, but asserts that it would be obvious to one skilled in the art to build

the wind park of Haller with such a sensor. Haller does not provide any teaching, suggestion, or motivation to detect wind conditions. In contrast, Haller expressly teaches away from detecting wind conditions because the goal of Haller's invention is to protect wind turbines from hail storms *irrespective of horizontal wind speeds*"(emphasis added; ¶ 0027; column 4)

To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. MPEP § 2143.

The Examiner has not established a *prima facie* case of obviousness because at least two of the above criteria are not met. First, there is no suggestion or motivation in Haller to detect wind conditions. Second, Haller does not teach or suggest all the claim limitations as admitted by the Examiner in the Office Action. Consequently, the disclosure and teachings of Haller, without more, are insufficient to establish a *prima facie* case of obviousness. Applicant respectfully requests that the Examiner withdraw the Section 103(a) rejections in view of Haller.

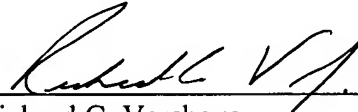
Conclusion

All of the claims remaining in the application are clearly allowable. Applicants respectfully request that Examiner Nguyen give the Declaration and corresponding remarks full consideration and enter them into the record. Examiner Nguyen is welcome to contact Mr. Vershave to clarify and/or correct any minor issues or informalities.

Favorable consideration and a Notice of Allowance are earnestly solicited.

Respectfully submitted,

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Declaration of Klaus G. Göken
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